IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.12.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

C.R.P.PD.No.106 of 2006
and C.M.P.No.1027 of 2006

1. T.P.Mani
2. T.M.Lakshmi ... Petitioners

Vs.

Krishnan ... Respondent

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order made in I.A.No.453 of 2005 in O.S.No.127 of 1999 on the file of the District Munsif-cum-Judicial Magistrate Court, Perunthurai dated 07.11.2005.

For Petitioners : Ms.P.V.Rajeswari for
Mr.A.Sasidharan

For Respondent : N.A.

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O R D E R

This revision petition is filed under Article 227 of the Constitution of India, directed against the order of the Trial Court in I.A.No.453 of 2005 in O.S.No.127 of 1999, filed by the defendants in the suit under Section 75 of the Indian Evidence Act, to refer the alleged sale receipt dated 16.12.1997 along with admitted signatures to a hand writing expert of Forensic Lab in Chennai by appointing a Court Commissioner and the same was dismissed.

2. The respondent has filed the suit for permanent injunction from interfering with the possession of the property, which claim was made, based on a sale receipt stated to have been executed by the petitioners dated 16.12.1997. It is no doubt true that the defendants have filed a written statement denying the execution of such sale receipt dated 16.12.1997. In such circumstances, when the application was filed as stated above for the purpose of referring the signatures in the sale receipt dated 16.12.1997 and comparing the admitted signatures of the defendants, the said application came to be dismissed by the Trial Court on the basis that as per Section 73

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of the Indian Evidence Act, the court itself can compare the signatures, when the admitted signatures are filed before the courts. The Trial Court has also found that when the suit was filed as early as in 1999, the petitioners/defendants have not raised any objection before the Court and therefore, by holding that referring such a document to the experts opinion will only to drag on the proceedings, the application filed by the defendants came to be dismissed.

3. Even after, the notice served on the respondents nobody appeared. Mr.A.Sasidharan learned counsel appearing for the petitioner placing reliance on the judgement of the Division Bench of this Court rendered in P.Sood & Co.,(Manufacturing) rep.by its Partner, Krishna Kumar Sood, Chennai-1 Vs. Peerchand Misrimalji Bhansali, Prop., Meena Metals, No.74, C.P.Road, Bombay-400054 reported in 2005(3) CTC 12 to substantiate his contention that when once the signature in the particular document is denied by the defendant in the written statement as well as the reply notice earlier, it was the duty of the plaintiff to take steps for examination of the disputed signature by handwriting experts. That was the case wherein, when the defendants had denied, writing of a letter dated 10.04.1992, which was relied upon by the plaintiff and on trial, when it was found that the plaintiff who has relied upon such a document which is stated to be a forged one and fabricated letter, it was the duty on the part of the plaintiff to take steps to ascertain the genuineness of the disputed signature, by sending the same to handwriting experts and it was in those circumstances, the Division Bench has come to a conclusion that inasmuch as the plaintiff has not taken steps, the suit has to be dismissed.

4. On the other hand, in the present case, the defendants has taken out an application for the purpose of referring the signatures in the sale receipt to an expert and it is yet to be decided by the Trial Court as to whether the plaintiff, who is placing reliance on the sale receipt dated 16.12.1997, has proved the genuineness of the same or not. It is in those circumstances, in my view, the learned Trial judge has correctly come to the conclusion that it is always open to the court by invoking the powers under Section 73 of the Indian Evidence Act, to compare the signature of the defendants in the disputed document dated 16.12.1997 and the admitted signature available in the court and in such circumstances, it is premature for the petitioners who have filed the application for sending the documents for experts opinion.

5. In view of the same, I am of the considered view that there is absolutely no illegality or irregularity in the order of the learned Trial judge. With the result the C.R.P. fails and the same is dismissed, however, making it clear that it is for the Trail Court

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at the time of trial, to compare the signature in the disputed document Ex.A.1 along with the admitted signatures of the defendants and come to a conclusion, as per Section 73 of the Indian Evidence Act. No costs. Consequently, connected C.M.P.is closed.

nbj

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The District Munsif-cum-
Judicial Magistrate,
Perunthurai

1 cc to Mrs.P.V.Rajeswari, Advocate, SR.61559

ppv (co)

dv/21.12.06

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